

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIAMI DIVISION

Case No. 08-21433-CIV-Jordan/McAliley

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALTERNATEL, INC.; G.F.G. ENTERPRISES LLC,
also d/b/a MYSTIC PREPAID; VOICE PREPAID,
INC.; TELECOM EXPRESS, INC.; VOICE
DISTRIBUTORS, INC.; LUCAS FRIEDLAENDER;
MOSES GREENFIELD; NICKOLAS GULAKOS;
and FRANK WENDORFF,

Defendants.

**PLAINTIFF FEDERAL TRADE COMMISSION'S OPPOSITION TO DEFENDANTS
G.F.G ENTERPRISES LLC, ALSO D/B/A MYSTIC PREPAID, VOICE PREPAID, INC.,
TELECOM EXPRESS, INC., AND VOICE DISTRIBUTORS, INC.'S EMERGENCY
MOTION TO STAY DISCOVERY AND FOR A PROTECTIVE ORDER PENDING
ADJUDICATION OF POTENTIALLY DISPOSITIVE MOTION TO DISMISS**

Plaintiff Federal Trade Commission ("FTC") respectfully submits this memorandum of law in opposition to the emergency motion to stay discovery and for a protective order under Federal Rule of Civil Procedure 26(c) and Local Rules 7.1(E) and 26.1(H) filed by Defendants G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Telecom Express, Inc., and Voice Distributors, Inc. (collectively the "Movants").¹

¹ Defendants Alternatel, Inc., Lucas Friedlaender, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff have not joined the motion to stay discovery.

INTRODUCTION

The Movants have not and cannot satisfy their burden of showing good cause why this Court should take the unusual step of staying discovery pending the resolution of the Movants' Motion to Dismiss Under Rule 12(b)(2) for Lack of Personal Jurisdiction [D.E. 24] ("Motion to Dismiss"). Indeed, a discovery stay in this case is particularly inappropriate because: (1) the Movants' Motion to Dismiss is so patently without merit that the Movants have abandoned the grounds for that motion; and (2) it would be contrary to, and as a practical matter would derail, the Movants' own agreement to a scheduling order that requires the rapid completion of discovery (by October 31, 2008) in time for a consolidated preliminary injunction hearing and trial on the merits scheduled to commence the week of December 15, 2008 (the "trial").

PROCEDURAL HISTORY

On May 19, 2008, the FTC filed its complaint and moved for entry of a temporary restraining order ("TRO") and a preliminary injunction against defendants Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Telecom Express, Inc., Voice Distributors, Inc., Lucas Friedlaender, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff (collectively the "Defendants"). In its complaint, the FTC charges that the Defendants have engaged in deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by: (1) misrepresenting the number of calling minutes provided by the Defendants' prepaid calling cards and (2) failing to disclose, or to adequately disclose, fees and charges associated with their cards.

On May 23, 2008, the Court issued a TRO against all the Defendants, finding that the FTC had demonstrated a likelihood of success on the merits and that entry of a TRO would be in the public interest. TRO, Findings, ¶¶ 2-5 [D.E. 25]. In entering the TRO, the Court also found

that it had subject matter jurisdiction over the FTC's lawsuit and that there was good cause to believe that it had personal jurisdiction over all of the Defendants. TRO, Findings ¶ 1. The TRO also authorized the parties to conduct expedited discovery and required the parties to respond to expedited discovery requests within five (5) calendar day from the date of service. TRO, XI.B-C, at 10. In the TRO, the Court also set a hearing on the FTC's motion for preliminary

requested the consolidation of the hearing on the FTC's motion for preliminary injunction with the final trial on the merits. The parties also requested discovery, to be completed by October 31, 2008, so that this case could be set for trial the week of December 15, 2008. On July 1, 2008, the Court issued a Scheduling Order [D.E. 54] granting the parties' requests, and therefore requiring that all discovery, including expert discovery, be completed by October 31, 2008, and consolidating the hearing on the FTC's motion for preliminary injunction with the final trial on the merits, scheduling for the week of December 15, 2008,

On June 20, 2008, the FTC served interrogatories and document requests on each of the corporate defendants. As reflected in its discovery requests, *see* ED TO5 set f6.58

D

the burden of showing good cause for a protective order staying discovery. *S.K.Y. Mgmt. LLC v. Greenshoe, Ltd.*

burdensome” and will require them to “expend significant time and expense to compile the requested information and documents.” Mot. at p. 2.² The mere fact that responding to discovery requests is time consuming is not a basis for seeking a complete stay of discovery. *See S.K.Y. Mgmt.*, 2007 WL 201258, at *2. Claims of the undue burden of discovery can be raised by Defendants in the context of answering and objecting to, if appropriate, any specific discovery requests Defendants believe are unduly burdensome or otherwise objectionable during the normal course of discovery.

II. A DISCOVERY STAY WOULD DERAIL THE DISCOVERY SCHEDULE AGREED TO BY THE MOVANTS.

In addition, a discovery stay would run directly contrary to the discovery schedule agreed to by all parties, including the Movants, during the parties’ Rule 26(f) conference. The Movants had filed their Motion to Dismiss before the scheduling conference. Instead of indicating that

1360 (11th Cir. 2002) (“district courts must have discretion and authority to ensure that their cases move to a reasonably timely and orderly conclusion”).

CONCLUSION

For the foregoing reasons, the Court should deny the emergency motion to stay discovery and for a protective order filed by Defendants G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Telecom Express, Inc., and Voice Distributors, Inc.

Dated: July 10, 2008

Respectfully submitted,

/s/ Roberto Anguizola

JANIS CLAIRE KESTENBAUM

(Special Bar No. A5501213)

ROBERTO ANGUIZOLA

(Special Bar No. 0616761)

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, NW, H-286

Washington, DC 20580

Telephone: (202) 326-2798 (Kestenbaum)

(202) 326-3284 (Anguizola)

Certificate of Service

I hereby certify that on **July 10, 2008**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Janis Claire Kestenbaum
Janis Claire Kestenbaum

SERVICE LIST

FTC v. Alternatel, Inc., et al., Case No. 08-21433-CIV-JORDAN/McALILEY

Mary Ellen Callahan, Esq.
Jamillia Ferris, Esq.
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004

Parker D. Thomson, Esq.
Carol Ann Licko, Esq.
Hogan & Hartson LLP
1111 Brickell Avenue
Miami, Florida 33131

*Attorney for Defendants Alternatel, Inc., and
Moses Greenfield*

*Attorneys for Defendants Alternatel, Inc., and
Moses Greenfield*

Peter W. Homer, Esq.
Rayda Masdeu, Esq.
HomerBonner
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, FL 33131

Peretz Bronstein, Esq.
Bronstein Gewirtz & Grossman LLC
60 East 42nd Street
Suite 4600
New York, NY 10165

Attorney for Defendant Moses Greenfield

*Attorneys for Defendants G.F.G. Enterprises
LLC also d/b/a Mystic Prepaid, Voice Prepaid,
Inc., Voice Distributors, Inc., Telecom Express,
Inc., Nickolas Gulakos, Lucas Friedlander,
Frank Wendorff*

Jane W. Moscovitz, Esq.
Moscovitz & Moscovitz, P.A.
Mellon Financial Center
1111 Brickell Avenue
Suite 2050
Miami, FL 33131

Court-Appointed Monitor